

Ms. Elize Lombard
Senior Tax Analyst
GTT
7900 Tysons One Place
Suite 1450
McLean, Virginia 22102

May 13, 2021

Licensees/Applicants: Hibernia Atlantic U.S. LLC, GTT Americas LLC, Perseus Telecom, Limited
Waiver and Refund Request: Late Payment Penalty
Disposition: Dismissed and Denied (47 U.S.C. § 159A(c) and (d), 47 CFR §§ 1.1160 and 1.1166)
Fiscal Year (FY) 2018: Late Payment Penalty
Date Request Filed: November 21, 2018
Date Regulatory Fee and Penalty Paid: October 12, 2018
Fee Control Nos.: RROG-2018-16588

Dear Ms. Lombard:

This responds to the request¹ of GTT Americas LLC on behalf of itself, Hibernia Atlantic U.S. LLC and Perseus Telecom, Limited (collectively, the Entities; singularly, Entity) for a partial or full waiver and refund of the penalties² the Entities paid for late payment of their Fiscal Year (FY) 2018 regulatory fees (the Request).

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to assess and collect regulatory fees to recover the costs of the Commission's regulatory activities,³ and when the required fee payment is received late or it is incomplete, to assess a penalty equal to twenty-five percent (25%) of the amount of the fee which was not paid in a timely manner.⁴

Each year, the Commission establishes the final day on which payment must be received before it is considered late, i.e., a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 CFR § 1.1164. For FY 2018, the deadline for paying regulatory fees was September 25, 2018.⁵ The Entities did not pay their FY 2018 regulatory fees and late payment penalties until October 12, 2018.

¹ Letter from Elize Lombard, Senior Tax Analyst, GTT, 7900 Tysons One Place, Suite 1450, McLean, VA 22102 to Marlene H. Dortch, Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554 (Nov. 12, 2018, *rec'd* Nov. 21, 2018) (Request).

² The Request states that Hibernia Atlantic U.S. LLC paid a late payment penalty of \$74,963.25. The Commission's records show that Hibernia paid a late payment penalty of \$39,437.50. We agree that Perseus Telecom, Limited and GTT Americas LLC paid late payment penalties of \$4345.50 and \$34,586.75 respectively.

³ 47 U.S.C. § 159(a).

⁴ 47 U.S.C. § 159A(c); 47 CFR § 1.1164.

⁵ See *Effective Date of FY 2018 Regulatory Fees and Multi-Year Wireless Fees*, Public Notice, 33 FCC Rcd 8770 (OMD 2018). On September 21, 2018, the Commission extended the deadline for payment of regulatory fees to September 27, 2018 for regulatees in certain Georgia, Virginia, North Carolina, and South Carolina counties affected by Hurricane Florence. The extended deadline did not apply to the Entities. See *Regulatee Fee Filing Window for Those Regulatees Affected By Hurricane Florence Extended to September 27, 2018*, Public Notice, 33 FCC Rcd 8804 (OMD 2018).

The Entities now request that we partially or fully waive and refund to them the statutorily required late payment penalty each paid, on the grounds that the employee responsible for paying each Entity's FY 2018 regulatory fee mistakenly failed to make the payments by the September 25, 2018 deadline, and that the Entities did not learn of the employee's mistake until after the fee deadline had passed.⁶

When we evaluate such matters, we consider whether the Request establishes the existence of bank error⁷ or presents legal grounds or clear mitigating circumstances⁸ to waive collection of the penalty payments.

The Request does not present valid grounds for relief. The penalty required by 47 U.S.C. § 159(c) is not limited to situations where the failure to pay was knowing or willful, but includes mistakes made by and circumstances within the control of the regulatee, as was the case here. Accordingly, the Request is denied.

If you have any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink that reads "James Lyons". The signature is written in a cursive, slightly slanted style.

James Lyons
Deputy Chief Financial Officer

⁶ Request.

⁷ 47 CFR § 1.1164; *see also*, *NTT America, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd 8088 (2006).

⁸ *See Sitka Broadcasting Co., Inc.*, Memorandum Opinion and Order, 70 FCC 2d 2375, 2378, para. 6 (1979), *citing Lowndes County Broadcasting Co.*, Memorandum Opinion and Order, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, Memorandum Opinion and Order, 23 FCC 2d 868 (1970); *see also NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).